

Legislative Bulletin.....October 15, 2009

H.R. 2892 — FY 2010 Homeland Security Appropriations Act Conference Report

BY THE NUMBERS:

In Millions of Dollars

	FY09	FY10 Request	FY10 Committee	Cmte v. Request	Cmte v. FY09
Appropriations	42,050	42,838	42,776	-62	726
<i>Emergency Approps</i>	<i>3,103</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>-3,103</i>
TOTAL	45,153	42,838	42,776	-62	-2,377

Excluding Emergency Appropriations, the Committee Bill is:

- **\$62 million or 0.1% less than the request**
- **\$726 million or 1.7% more than last year**
- **\$7.9 billion or 22.7% more than FY 2008**

Spending Discussion: The bill provides a total funding level in FY 2010 of \$42.8 billion, which is \$726 million or 1.7% more than last year. The funding for programs under this bill comes on top of \$3.1 billion of emergency-designated spending in FY 2009. Compared with FY 2008, the bill is a **\$7.9 billion** or **22.7%** increase. Under the Democrats' 302(b) allocation (which sets the spending plan for the FY 2010 appropriations process), all twelve bills will receive spending increases, with a total spending level of \$1.09 trillion—an increase of \$77 billion or 7.6% compared to last year.

Earmarks:

The [Joint Explanatory Statement](#) includes a list of earmarks beginning on page 279.

Items of Note:

Office of the Secretary: \$147.8 million—\$24.3 million or 19.6% above last year, and \$13.0 million or 8.1% below the President’s request.

Border Security Fencing, Infrastructure, and Technology (BSFIT): \$800 million—\$25.0 million or 3.2% more than last year, and \$21.5 million or 2.8% more than the request.

Transportation Security Administration (TSA): \$5.3 billion—\$891.0 million or 20.4% more than last year, and \$137.5 million or 2.5% less than the request.

Coast Guard: \$9.9 billion—\$537.7 million or 5.7% more than last year, and \$169.8 million or 1.7% more than the request.

FEMA: \$7.1 billion—\$140.6 million or 2.0% more than last year, and \$106.4 million or 1.5% less than the request.

Guantanamo Bay: The conference report includes a prohibition on the release of prisoners into the United States and territories. However, the conference report *still allows for the transfer* of an individual detained as of June 24, 2009, at Naval Station, Guantanamo Bay, Cuba, 45 days after the President submits to Congress:

- A determination of the risk that the individual might instigate an act of terrorism within the continental United States, Alaska, Hawaii, the District of Columbia, or the United States territories if the individual were so transferred.
- A determination of the risk that the individual might advocate, coerce, or incite violent extremism, ideologically motivated criminal activity, or acts of terrorism, among inmate populations at incarceration facilities within the continental United States, Alaska, Hawaii, the District of Columbia, or the United States territories if the individual were transferred to such a facility.
- The costs associated with transferring the individual in question.
- The legal rationale and associated court demands for transfer.

The conference report includes language that prohibits the release of detainee photos if it is determined that the release of photos would endanger citizens or members of the Armed Forces of the United States. Additionally, detainees are placed on the “No Fly” list, unless the President can certify to Congress the detainee poses not threat to the United States, it’s citizens, and allies.

Outsourcing/A-76 Activities: Prohibits funds from being used under OMB Circular A-76 (governing the federal government’s outsourcing policies) to implement any pending or future competitive sourcing for work performed by employees of the U.S. Citizenship and Immigration Services or of the Coast Guard National Vessel Documentation Center. In other words, this provision would prohibit federal employees from having to compete with private-sector entities for certain non-inherently governmental functions of the agencies (like food service and lawn-mowing).

Buy America Act: Prohibits funding in the bill from being used in contravention of the Buy America Act.

Butane Lighters: Requires the Assistant Secretary of Homeland Security to reverse a “determination that butane lighters are not a significant threat to civil aviation security” in order to receive certain funding in the bill.

Horse Slaughter Provision: Prohibits funds from being used to “destroy or put out to pasture any horse or other equine belonging to the federal government that has become unfit for service, unless the trainer or handler is first given the option to take possession of the equine through an adoption program that has safeguards against slaughter and inhumane treatment.”

U.S.-Mexico Border Pedestrian Fence: The conference report does **not** include an amendment offered by Senator DeMint, and adopted by the Senate by a vote of 54 to 44, that provided \$300 million for pedestrian fencing along the U.S.-Mexico border.

Funding Summaries:

In Thousands

	FY09 Enacted	FY09 Request	FY10 Cmte	Cmte vs. FY09	Cmte vs Request	% vs. FY09	% vs. Request
Departmental Operations	1,170,026	1,260,018	1,135,961	-34,065	-124,057	-2.9%	-9.8%
Office of the Fed. Coord. For Gulf Coast	1,900	2,000	2,000	100	----	5.3%	----
Inspector General	98,513	127,874	113,874	15,361	-14,000	15.6%	-10.9%
Immigration and Customs Enforcement	5,308,210	5,776,000	5,741,752	433,542	-34,248	8.2%	-0.6%
Aviation Security	2,434,518	3,210,850	3,114,040	679,522	-96,540	27.9%	-3.0%
Transportation Security Administration	4,367,358	5,395,956	5,258,446	891,088	-137,510	20.4%	-2.5%
U.S. Coast Guard	9,361,052	9,728,988	9,898,788	537,736	169,800	5.7%	1.7%
U.S. Secret Service	1,412,954	1,489,584	1,482,644	69,690	-6,940	4.9%	-0.5%
Firefighter Assistance Grants	775,000	----	810,000	35,000	810,000	4.5%	NA
U.S. Fire Administration	44,979	45,588	45,588	609	----	1.4%	----
Total, Preparedness	8,303,360	8,691,755	8,585,473	282,113	-106,282	3.4%	-1.2%
Total, FEMA	6,987,906	7,234,818	7,128,468	140,562	-106,350	2.0%	-1.5%
Citizenship and Immigration Services	100,000	112,000	137,000	37,000	25,000	37.0%	22.3%
Science and Technology	932,587	968,391	1,006,471	73,884	38,080	7.9%	3.9%
Domestic Nuclear Detection Office	514,191	366,136	383,037	-131,154	16,901	-25.5%	4.6%

Conservative Concerns: Some conservatives may be concerned with various aspects of the conference report, including, but not limited to:

Excess Spending. H.R. 2892 provides a total spending level of 42.8 billion—\$726 million or 1.7% more than last year. This comes on top of \$3.1 billion of emergency-designated spending in FY 2009. And compared to FY 2008, this conference report represents a \$7.9 billion or 22.7% increase.

U.S. Mexico Border Pedestrian Fencing. The conference report does not include a provision from the Senate-passed bill, supported by many conservatives, that would provide \$300 million for pedestrian fencing along the U.S.-Mexico border. The Senate adopted this amendment, offered by Senator DeMint, by a vote of 54-44.

Higher Funding for Transportation Security Administration (TSA). The conference report provides \$5.3 billion—\$891.0 million or 20.4% more than last year for the TSA.

Guantanamo Bay. Some conservatives may be concerned that while the conference report includes a prohibition on the release of prisoners into the United States and territories it would **still allow for the transfer** of such an individual if the President submits certain information to Congress.

Committee Action: H.R. 2892 was reported out of the House Appropriations Committee as an original measure on June 17, 2009 by voice vote, and passed the House by a vote of 389-37 on June 24, 2009. The Senate passed its version of the legislation on July 9, 2009 by a vote of 84-6.

Cost to Taxpayers: The bill appropriates a total of \$42.8 billion in FY 2010.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill increases spending for programs in the FY 2010 Homeland Security bill by \$726 million or 1.7%.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available listing any possible mandates.

Constitutional Authority: No statement of constitutional authority is available. For the House-passed version of the legislation, the House Appropriations Committee cited Clause 7 of Section 9 of Article I of the Constitution (the power of Congress to appropriate money). The committee did not cite constitutional authority for the various spending items themselves.

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